

REMARKS

This responds to the Final Office Action dated September 17, 2008.

No claim is amended. Claims 1-10, 12-14, 73-79, and 81 remain pending in this application.

§103 Rejection of the Claims

Claims 1-10, 12-14, 73-79, and 81 were rejected under 35 U.S.C. §103(a) as being unpatentable over Dennis et al. (U.S. Patent No. 6,114,164, hereinafter “Dennis”) in view of Kofidis et al. (Journal of Thoracic and Cardio. Surg., hereinafter “Kofidis”), Farb et al. (U.S. Patent No. 6,048,722, hereinafter “Farb”), Bursac et al. (Am. J. Physiol. 277, hereinafter “Bursac”) and Terracio et al. (In Vitro Cell. And Develop Bio., hereinafter “Terracio”).

Claim 1

Applicant respectfully traverses the rejection and submits that the Office Action does not set forth a proper *prima facie* case of obviousness because the cited portions of Dennis, Kofidis, Farb, Bursac, and Terracio, individually or in combination with each other, and reasoning given in the Office Action, do not provide the claimed subject matter. For example, Applicant is unable to find in the cited portions of Dennis, Kofidis, Farb, Bursac, and Terracio, individually or in combination, among other things, a biological treatment administration module coupled to a culturing module and adapted to deliver a biological stimulus that enhances one or more of proliferation, engraftment, survival, and differentiation of the cells after their administration into a body, the biological treatment administration module including one or more biological stimulus agents selected from protein and nucleic acid, as recited in claim 1. Applicant is unable to find in the Office Action a proper reason that remedies this deficiency of the cited references.

Under Response to Arguments, the Office Action states:

In response it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. (Citations omitted.) As long as the apparatus or combination of the references recited in the rejection is capable of administering a biological stimulus agent, the prior art device meets the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the instant claim and the device encompassed by the combination of the references set forth in the prior art rejection of record.

Serial Number: 10/722,115

Filing Date: November 25, 2003

Title: METHOD AND APPARATUS FOR CELL AND ELECTRICAL THERAPY OF LIVING TISSUE

Applicant respectfully traverses this statement because the Office Action apparently fails to consider the “one or more biological stimulus agents selected from protein and nucleic acid”, which is recited in claim 1 as a structural limitation.

It is respectfully noted that claim 1 recites a biological treatment administration module “including” one or more biological stimulus agents selected from protein and nucleic acid, as opposed to “adapted to include” or “capable of holding” the one or more biological stimulus agents. Therefore, claim 1 differs from the combination of the cited references in that the claimed biological treatment administration module includes, as part of the structure, the one or more biological stimulus agents selected from protein and nucleic acid.

Additionally, it is respectfully submitted that the Office Action has not provided a rationale for which one of ordinary skill in the art would have had reasonable expectation of success in the combination of the cited references. For example, Applicant is unable to find in the cited references and the Office Action a reason for expecting the delivery of the electrical stimuli, the mechanical stimuli, and the biological stimuli to produce an additional benefit relative to the delivery of a subset thereof. Applicant respectfully requests such a rationale, or withdrawal of the rejection.

Applicant respectfully requests reconsideration and allowance of claim 1.

Claims 2-10, 12-14, 73-79, and 81

Applicant respectfully traverses the rejection. Claims 2-10, 12-14, 73-79, and 81 are dependent on claim 1, which is believed to be patentable for at least the reasons set forth above. Therefore, the discussion above for claim 1 is incorporated herein to support the patentability of claims 2-10, 12-14, 73-79, and 81.

Applicant respectfully requests reconsideration and allowance of claims 2-10, 12-14, 73-79, and 81.

RESPONSE UNDER 37 C.F.R. § 1.116 - EXPEDITED PROCEDURE

Serial Number: 10/722,115

Filing Date: November 25, 2003

Title: METHOD AND APPARATUS FOR CELL AND ELECTRICAL THERAPY OF LIVING TISSUE

Page 8

Dkt: 279.597US1

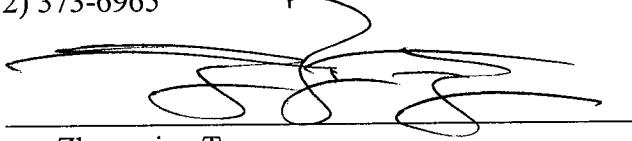
CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (612) 373-6965 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6965

Date November 17, 2008 By 

Zhengnian Tang
Reg. No. 55,666

Name Kate Gannon

Signature Kate G

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on November 17, 2008.